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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,686	07/02/2001	William Elmer Kish		1760
7590	12/10/2004		EXAMINER	
WILLIAM E. KISH			LASTRA, DANIEL	
1738 St. Andrews Drive			ART UNIT	PAPER NUMBER
Moraga, CA 94556			3622	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/898,686	KISH, WILLIAM ELMER
	<b>Examiner</b>	<b>Art Unit</b>
	DANIEL LASTRA	3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11/19/01.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

1. Claims 1-10 have been examined. Application 09/898,686 has a filing date 07/02/2001.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Eggleston et al (U.S. 6,061,660).

As per claim 1, Eggleston teaches:

A system using transaction events to generate user incentives:

a host computer for transmitting a user identification profile (see figure 2, item 18; column 13, lines 5-42);

a server computer under the control of software components, wherein the components comprise:

a transaction event module for generating points based upon a transaction event (see column 35, lines 20-37);

a Point Exchange Module for exchanging points (see column 13, lines 42-67; column 16, lines 46-67; column 30, line 63 – column 31, line 3);

wherein the server computer updates the identification profile based upon the transaction event or point conversion (see column 16, lines 46-67; column 27, lines 20-34).

As per claim 2, Eggleston teaches:

The system of claim 1, wherein the software components of the server computer further comprise, a Point Conversion Module for converting points to units (see column 30, line 65 – column 31, line 3; column 35, lines 20-37).

As per claim 4, Eggleston teaches:

The system of claim 1, wherein the Point Exchange Module further comprises a Point Auction Module for selling or purchasing points (see column 31, lines 33-50; column 35, lines 20-35).

As per claim 9, Eggleston teaches:

The system of claim 1, wherein the database further comprises three databases the Employee File Manager, Customer File Manager and the Tabulator for employees, customers and point data storage (see figure 20; column 35, lines 20-37).

As per claim 10, Eggleston teaches:

The system in Claim 1, comprises an Identification Profile (ID) wherein the ID is based upon a subscription agreement (see column 13, lines 6-42).

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggleston et al (6,061,660).

As per claim 3, Eggleston teaches:

The system of claim 1, wherein the Point Exchange Module exchanges points for a "value" selected from the group consisting of equity, cash, product and services (see column 31, lines 33-50; column 35, lines 20-35; column 7, lines 45-50). Eggleston does not expressly mention equity. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that an equity prize would be another incentive prize, besides cash, merchandise or points, that sponsors would give to users that participate and win in the sponsor's incentive program.

As per claim 5, Eggleston teaches:

The system of claim 1, but does not expressly teach further comprises a Work Shift Module wherein the employee exchanges work shifts. However, Eggleston teaches "Inside the firm, employees are typically rewarded for certain actions by winning prizes or points. Outside the firm, consumers typically earn rewards or win or earn awards or prizes by playing games of chance or games of skill. The sponsor can select the target of the incentive program, which can, for example, be employees, suppliers, or customers of the sponsor. The sponsor can select from a set of common descriptions of incentive programs from a list including employee morale programs, promotions, incentive programs, sweepstakes, giveaways, games, and coupons. The sponsor can select from a selection of descriptive types of incentive programs, such as online

testing, attendance monitoring, games of skill, such as trivia, games of chance (submit to win), and customer services (surveys, questionnaires, and the like). Games of skill are embodied by an algorithm that determines whether a "win" has occurred based on the play of the game by the consumer. Games of chance are typically embodied by algorithms that determine, based on a random number generator or similar algorithm, whether the consumer has won before the consumer plays. The sponsor can select whether the incentive program is short-term, such as with an instant win incentive program, or long-term, such as in a sweepstakes, performance reward program, employee loyalty program, or customer loyalty program. The sponsor can select from a wide variety of visual or graphical implementations for incentive programs, including, without limitation buttons, hypertext links, banners, scratch-and-win games, puzzles, pinball, text games, and other text and graphics. Any text or graphical element that can appear in a computer game or text screen could be implemented as part of the selected graphics of an incentive program. The graphical or text implementation objects can also constitute individual incentive programs themselves. Single incentive program types can also be combined to build larger, combined incentive programs. The sponsor can also define other "win-eligible" activities, such as clicking the URL for the sponsor's site, spending a certain amount of time on a particular web page, or the like. Finally, the sponsor can select from a wide variety of prize types, including merchandise, cash, services, discounts, coupons, and points (such as loyalty points). The host embodies the choices in each of the above areas, as well as any other classifications, as parameters that can be selected by the sponsor who is interacting with the incentive

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builder program; thus, by interacting with a simple graphical user interface, the sponsor can easily build an incentive program having the desired visual effects and having code associated with those effect to execute a running incentive program of the type represented by the visual effects. Once the sponsor has selected all parameters, the incentive builder program can build the incentive program that satisfies all of the parameters, by combining preexisting code for each of the individual components into larger files that embody the entire incentive program" (see column 31, lines 25-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that if employers reward employees with prizes or points for having good attendance, as taught by Eggleston, then the same employers would give points or prizes to employees that are willing to change their work schedule. Employees would be more than willing to change their work schedule if they know that they would receive a prize or incentive for accepting the schedule change.

As per claim 6, Eggleston teaches:

The system of claim 1, but does not expressly teach further comprises a Work Shift Exchange Module wherein the employee exchanges work shifts. The same rejection applied to claim 5 is applied to claim 6.

As per claim 7, Eggleston does not expressly teach:

The system of claim 6, further comprises a Scheduler wherein the Scheduler identifies employee work shift availability. The same rejection applied to claim 5 is applied to claim 7. Official Notice is taken that is well known in the business art to use a schedule program to identify employee work shift availability.

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As per claim 8, Eggleston does not expressly teach:

The system of claim 6, further comprises a Schedule Auction Module wherein the employees can exchange work shifts wherein each work shift exchange represents a certain point value. The same rejection applied to claim 5 is applied to claim 8.

### **Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra  
December 6, 2004

*Yolanda Quinata*  
Primary Examiner  
AU 3622